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May 17, 1995

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: MM Docket Nos. 94-150, 92-51, 87-154
Attribution of Broadcast Interests

Dear Mr. Caton:

Transmitted herewith on behalf of Communications Corporation of America are an original and four (4) copies of its Comments in the above-referenced consolidated proceeding.

Should any question arise concerning this matter, please communicate with this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH, P.L.C.


Patricia A. Mahoney
Counsel for
Communications Corporation of America

Enclosures

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Review of the Commission's)	MM Docket No. 94-150
Regulations Governing Attribution)	
of Broadcast Interests)	
)	
Review of the Commission's)	MM Docket No. 92-51
Regulations and Policies)	
Affecting Investment)	
in the Broadcast Industry)	
)	
Reexamination of the Commission's)	MM Docket No. 87-154
Cross-Interest Policy)	

Directed to: The Commission

COMMENTS

**COMMUNICATIONS CORPORATION
OF AMERICA**

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Directed to: The Commission

COMMENTS

SUMMARY

Communications Corporation of America and its subsidiaries ("CCA") herein respectfully submits its Comments in response to the Notice of Proposed Rule Making ("Recent Attribution NPRM"), FCC 94-324 (released January 12, 1995), in the above-captioned consolidated proceeding.

CCA urges the Commission to expedite this proceeding, to eliminate the outmoded and unnecessary cross interests policy, to relax its attribution rules, and to leave LMAs unregulated or with minimal regulation no more restrictive than the regulations imposed on radio LMAs. Finally, CCA urges the Commission not to

attribute television LMAs, unless it amends its local ownership rule for television to permit the ownership of two television broadcast stations in a market.

Local television broadcasters face ever increasing competition from national multichannel video service providers that face no ownership regulation. If local television stations are to continue to be able to provide service to their communities, they must not be hampered by government regulations that discourage investment and divert otherwise available resources to their competitors.

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Directed to: The Commission

COMMENTS

Communications Corporation of America and its subsidiaries ("CCA"),¹ by its attorneys, hereby respectfully submits its Comments in response to the Notice of Proposed Rule Making ("Recent Attribution NPRM"), FCC 94-324 (released January 12, 1995), in the above-captioned consolidated proceeding:

I. INTRODUCTION

In its Recent Attribution NPRM, the Commission indicates that it is initiating and commencing a thorough review of its broadcast media attribution rules. However, two of the three proceedings that have been consolidated are proceedings

¹CCA owns and controls the licenses of KPEJ-TV, Odessa, Texas, KWKT-TV, Waco, Texas, KVEO-TV, Brownsville, Texas, KMSS-TV, Shreveport, Louisiana, and WGMB-TV, Baton Rouge, Louisiana.

(MM Dockets 92-51 and 87-154) that already were commenced, had comments and reply comments filed, and remain open. It is clear from the comments and reply comments already on file in those proceedings that this is an area of uncertainty and confusion for broadcasters and the investment community (the attribution rules permit what the cross interests policy would appear to prohibit) and that such confusion and uncertainty directly affects broadcasters' access to capital. With broadcasters facing ever increasing competition and anticipating future capital needs, as the broadcast industry prepares for digital audio broadcasting and advanced television, broadcasters need access to capital.

At the time the Comments were filed in Docket 92-51, financing for broadcasting was almost at a standstill. While banks are lending at the current time, they are not lending at the levels they had been; and further regulations or uncertainty in the Commission's ownership attribution rules and policies could lead to a drying up of financing once again.

CCA urges the Commission to expedite this proceeding, to eliminate the outmoded and unnecessary cross interests policy, to relax its attribution rules, and to leave LMAs unregulated or with minimal regulation no more restrictive than the regulations imposed on radio LMAs. Finally, CCA urges the Commission not to attribute television LMAs, unless it amends its local ownership rule for television to permit the ownership of two television broadcast stations in a market.

II. ATTRIBUTION

On March 12, 1992, the Commission adopted a Notice of Proposed Rulemaking and Notice of Inquiry, 7 FCC Rcd 2654 (1992), ("Original Attribution NPRM"), and initiated a proceeding, MM Docket No. 92-51, to seek comment on "possible means for reducing unnecessary regulatory constraints on investment in the broadcast industry." At the very outset of the Original Attribution NPRM, the Commission gave three reasons why its action was necessary and appropriate:

"We believe this action is particularly appropriate now, since the availability of capital has recently become a matter of increasing concern to the industry."

"We also believe that this action is necessary to ameliorate the difficulties that new entrants to this industry, including, in particular, minorities and women, have experienced in obtaining adequate financial backing and in successfully breaking into broadcast ownership."

"Furthermore, the capital demands of the broadcast industry for all participants can only be expected to increase in the near future, as new technologies such as Digital Audio Broadcasting and Advanced Television are implemented. The availability of capital for such enterprises is likely to be a significant determinant of whether U.S. preeminence in the field of broadcasting will be preserved."

7 FCC Rcd 2654 (footnotes omitted). Describing the broadcasting industry as "a cornerstone of American commerce with substantial effects on other parts of the U.S. economy," the Commission noted the impact of broadcasting on "a host of other industries." Id. The Commission then stated:

"Given the significance of the domestic broadcasting industry to the economy, it is vitally important that our regulatory programs be as minimally burdensome on

investment in the industry as possible, consistent with our own statutory mandate." Id.

In response to its Original Attribution NPRM, the Commission heard from investors and potential investors, law firms, trade associations representing broadcasters and investors, and public interest groups. While there were sharply divergent views and comments on the issue of whether the Commission should permit the holding of security and reversionary interests in licenses, there was no disagreement on and no opposition to the Commission's proposals to relax its attribution benchmarks for active and passive stockholders or to modify its insulation criteria as to widely-held limited partnerships and other business development companies organized as such. There also was no disagreement about the status of lending to the broadcast industry (which many commenters referred to as a "crisis") and the constraints that unnecessary Commission regulations placed on investment in the industry.

The consensus among investors was that funds for investment were available but loans were not being made to the broadcast industry. See, e.g., Comments of American Security Bank. While most investors focused on their inability to secure the broadcast license, others focused also on the attribution rules. The National Association of Investment Companies, a trade association representing the minority venture capital industry, offered:

"The relaxation of attribution rules would provide Specialized Small Business Investment Companies (SSBICs) with increased flexibility in structuring potential investments. Many SSBICs have experience and the capital to invest in the broadcasting industry. However, they are being forced to forgo investment opportunities because of investment

restrictions placed on the industry and the lack of potential syndication partners. This problem creates a gap between the minority broadcasting entrepreneur and the financial resources necessary to purchase a company.

If the attribution bench mark was relaxed it would allow SSBICs to purchase a larger equity stake in each venture. Additionally, this adjustment in FCC rules could increase the pool of potential investors. Investors who have traditionally stayed away from this industry because of such a low attribution bench mark might now consider the broadcasting industry as a viable investment opportunity."

See Comments of National Association of Investment Companies, filed June 15, 1992, in MM Doc. 92-51. See also Comments of Prudential Insurance Company of America, filed June 12, 1992, in MM Doc. 92-51 at 5-6.

Similarly, the Canadian Imperial Bank of Commerce (CIBC), then one of the 70 largest financial institutions in the world and a lender to the U.S. broadcasting industry since 1986,² described the U.S. broadcasting industry as "in turmoil" and "seriously undercapitalized," with many broadcasters "seriously in debt" or in default of their loan agreements. CIBC stressed that "conventional methods of capitalizing the industry must change. This change must and will affect station values, debt collateral coverage, and the ability of existing investors to realize adequate (or any) returns on their investments." CIBC applauded changes in the radio duopoly and national ownership rules. With respect to attribution, CIBC commented that the FCC's ownership attribution rules "constrain the logical (and inevitable) consolidation

²CIBC stated in its Comments in Docket 92-51, filed July 10, 1992, that it was one of the principal lenders to the U.S. broadcasting industry with total commitments in excess of \$400 million.

of the broadcasting industry" and that changes to the attribution rules "will have a positive impact on capital flows to the broadcasting industry."

In Reply Comments, the National Association of Broadcasters (NAB) stated that "[t]he need for innovation in the broadcast financing environment is striking." The NAB pointed out that in 1989 banks supplied 2.2 billion dollars of new financing for broadcast stations, but two years later the amount of new bank financing had collapsed to only 191 million dollars. The NAB commented further that:

"In the absence of readily available sources of capital, new entrants will be foreclosed from the broadcasting industry. Without financing, the market for existing stations will diminish and the value of stations will decline precipitously. A recent survey of industry values conducted by *Broadcasting* magazine indicates that this has already occurred; it found that the asset value of the broadcasting industry was down by almost one third, largely due to the absence of financing for acquisitions. An industry characterized by declining values will find it increasingly impossible to finance improvements in equipment and services, resulting in a deterioration of service to the public. Further, licensees who desire to retire or otherwise dispose of stations will experience great difficulty in finding available buyers, forcing them to continue operating facilities contrary to their wishes. As the Commission reconsiders its ownership rules to permit entities to own or control a greater number of stations, broadcasters will also require access to capital to take advantage of the new ownership options."

NAB Comments at 2-3 (footnotes omitted). The NAB therefore supported the Commission's proposals to amend the attribution rules:

"Changing the attribution rules will permit new forms of investment in broadcast stations....More flexible attribution standards may encourage the creation of new investment vehicles by which interests in broadcast groups and stations can be shared among a great number of investors without raising multiple ownership issues or creating difficult disclosure obligations."

Despite the serious and urgent nature of the comments and reply comments received in response to the Original Attribution NPRM, it is now three years after release of the Original Attribution NPRM, and the Commission is again seeking comments on proposals for which it already received substantial support from all segments of the industries affected by its proposals. However, absent from the Commission's Recent Attribution NPRM is the degree of concern about the broadcast industry that permeated the Original Attribution NPRM.

The reasons the Commission articulated for initiating MM Docket 92-51 remain valid today. The availability of capital continues to be a matter of increasing concern to the industry. Moreover, broadcasters must compete for investment capital with other communications services that have been developed, expanded, or initiated since adoption of the Original Attribution NPRM, such as PCS, wireless cable,³ and DBS. New entrants to the industry continue to face hurdles in attracting capital, and they have recently received several setbacks that will make it even more difficult for them to attract capital in the future, e.g., elimination of tax certificates, stay on entrepreneur's blocks in PCS, efforts to eliminate affirmative action programs on Capitol Hill.

Rather than undertake the rigid, scholarly analysis that the Commission appears anxious to undertake in its Recent Attribution NPRM, the Commission should adopt immediately its proposals in MM Docket 92-51 to increase its attribution

³See e.g., Rick Brown, "MMDS (Wireless Cable): A capital ideal," Broadcasting & Cable (May 1, 1995).

benchmarks and expand the categories of passive investors, to which no party objected. More importantly, **the Commission should not now adopt any change to its attribution policies that is not designed to foster or encourage investment in the broadcast industry.** Today, as in 1992, it is "vitally important that [the Commission's] regulatory programs be as minimally burdensome on investment in the broadcast industry as possible." Specifically, the Commission should not take any action that would make debt financing more difficult to obtain.

The Commission has previously recognized that non-voting stock, warrants, debentures, and other convertible interests, many of which can be bought and sold for value without ever being converted to stock, represent important vehicles for financing because they exist outside the concerns and constraints of the multiple ownership rules. These interests, which do not give their holder any right to vote or control, ought to remain not attributable. The Commission should not act in any way that would restrict (by application of the attribution rules or cross interests policy) investment vehicles that the Commission feels may give an investor the ability to "influence" a licensee. The Commission's sole concern should be whether an interest or position amounts to an ability to "control."

Over the last three years, while the Commission has not acted to alleviate the crisis that has affected lending to the broadcasting industry, parties have sought creative ways to attract financing and to improve the financial condition of broadcast properties without violating the Communications Act or the Commission's multiple ownership rules and policies. Peppered throughout the Recent Attribution NPRM are

references to "concerns" that certain nonattributable investments, while completely permissible under the Commission's rules, may permit a degree of influence such that they should be attributable. The Recent Attribution NPRM does not indicate what such concerns are, who has these concerns, what types of interests raise such concerns, and why. Rather than delay relief to the broadcast industry while the Commission seeks to identify possible ways in which the spirit of its rules and policies can be violated, the Commission should adopt the reforms that have been demonstrated are needed now. The Commission can use its enforcement powers to investigate or inquire further into any specific arrangements that come to its attention that raise such "concerns."

While lending to the broadcasting industry may no longer be in a state of crisis (lower interest rates, the changes in the radio rules, the growth of LMAs and other developments having spurred investment), the availability of financing to the broadcasting industry is still a concern. Moreover, the investment community is still very sensitive to changes in the regulatory environment that impact on communications investors. Only last month, for example, the lead article in one edition of Communications Daily (Monday, April 10, 1995), was about how a court stay of a PCS auction was drying up financing and could tie up equipment vendors and distribution outlets as well. See "'Materially Diminished' Value; Experts See Entrepreneurs Block Auction Delay Drying Up Financing Options," Vol. 15, N. 68 Communications Daily (April 10, 1995).

The Commission must realize that the actions it takes in this proceeding have the potential to restrict the development of broadcasting and further impair the ability of broadcasters to compete with the ever growing list of competitors they face.

III. LOCAL MARKETING AND TIME BROKERAGE AGREEMENTS

The Commission should not attribute stations brokered pursuant to lawful time brokerage or local marketing agreements to the Broker. On this date CCA is also submitting comments in Docket MM No. 91-221, which Comments CCA incorporates herein by reference. CCA demonstrates in MM No. 91-221, as the Commission has already recognized, that such agreements are in the public interest. The Commission has explicitly stated that licensees entering into such agreements must maintain control over their licensed facilities. As long as the licensee maintains control, there is no reason to "attribute" the Brokered station to the Broker. Moreover, attributing LMAs will result in their benefits not being available in most markets.

IV. CROSS INTERESTS POLICY

CCA believes that the Commission's cross interests policy should be eliminated. The policy is confusing, particularly since many of the relationships that previously might have come under scrutiny under this policy (joint ventures, non voting stock, other non attributable interests), are now freely permitted under FCC ownership and attribution rules and policies. For example, the Commission has indicated in its Recent Attribution NPRM that it wishes to develop a more complete and updated record in its review of the cross-interest policy as applied to key employees, joint ventures, and non attributable equity interests. With respect to joint

ventures, the Commission has already created one such record, the radio ownership rules proceeding, in which it concluded that time brokerage and local marketing agreements and other joint ventures are in the public interest; and the Commission is in the process of creating a second record on joint ventures in the television ownership proceeding. There is no reason for a third complete record. The fact that the Commission is even considering the issue of whether the cross-interest policy should apply to and prohibit joint ventures causes uncertainty and confusion, particularly when (as is the case here) it comes on the heels of an extensive review of broadcast ownership rules and policies and a conclusion that there is no need to prohibit or substantially regulate joint ventures. The same is true for non-attributable interests. If the Commission determines, after a lengthy rulemaking proceeding, that an interest does not rise to a level where it should be attributable, it makes no sense to turn around and prohibit that same interest under the cross interests policy.

The Commission's rules should provide clarity and certainty. Relationships and conduct that are to be prohibited should be clearly proscribed. If an individual or entity does not possess a current and valid right to vote and control a licensee or licensed facility, that person's interest should not be attributable. Interests or rights to vote that can be exercised in the future should be attributable only when exercised.

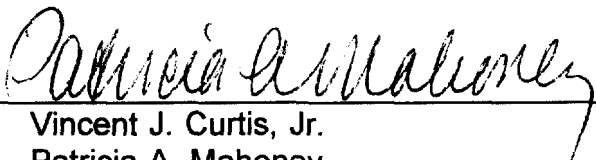
Broadcast licensees must still operate in the public interest and must comply with antitrust and unfair trade laws and regulations. There is no longer a need or justification for the Commission's cross interest policy.

V. CONCLUSION

CCA urges the Commission to expedite this proceeding but to approach the issues with caution. Local television broadcasters face ever increasing competition from national multichannel video service providers that face no ownership regulation. If local television stations are to continue to be able to provide service to their communities, they must not be hampered by government regulations that discourage investment and divert otherwise available resources to their competitors.

Respectfully submitted,

COMMUNICATIONS CORPORATION OF AMERICA

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